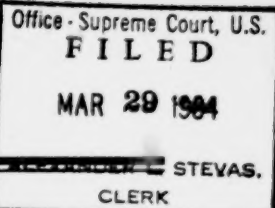


No. 83-1341



IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1983

WESTERN COAL TRAFFIC LEAGUE, *et al.*,  
*Petitioners,*

v.

UNITED STATES OF AMERICA and  
INTERSTATE COMMERCE COMMISSION, *et al.*,  
*Respondents.*

On Petition for Writ of Certiorari to the  
United States Court of Appeals  
for the Fifth Circuit

**BRIEF OF RESPONDENT  
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**QUESTION PRESENTED**

Whether the Interstate Commerce Commission is permitted to consider all relevant evidence of "effective competition" including product and geographic competition in determining whether "market dominance" exists in individual railroad rate proceedings.

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**BRIEF OF RESPONDENT  
RAILROADS IN OPPOSITION**

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The respondent railroads, listed at pp. 1a-2a, below, submit this brief in opposition to the petition for certiorari.

**STATEMENT OF THE CASE**

Petitioners—representing primarily utilities and other coal shippers—seek review of guidelines issued in 1981 by the Interstate Commerce Commission<sup>1</sup> and applied since that time in determining the factual question whether “market dominance” exists in individual railroad rate cases arising under the

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<sup>1</sup> *Ex Parte 320* (Sub. No. 2), 365 I.C.C. 118 (1981). Pet. App. D. References to “Pet. App.” are to the separate appendix volume accompanying the certiorari petition.



Interstate Commerce Act. The Court of Appeals for the Fifth Circuit, sitting *en banc*, upheld the guidelines as a reasonable exercise of the Commission's broad authority, expressly conferred by statute, to implement the market dominance concept.<sup>2</sup> The agency's guidelines employ accepted tests of competition and accord with the governing statute. No conflict exists among the circuits or with any decision of this Court.

1. For almost a hundred years, between enactment of the Interstate Commerce Act in 1887 and the amending 4-R Act in 1976,<sup>3</sup> virtually all interstate railroad rates were subject to ICC scrutiny to assure that they were reasonable and non-discriminatory. Any attempt by a railroad to raise or lower a rate could, and often did, prompt lengthy and expensive administrative proceedings. Railroads were thus subject to pricing constraints unknown in most segments of American industry.

By 1976, the premise for such extensive railroad rate regulation—railroad dominance of transportation—had long been outdated. Since World War II more than two-thirds of intercity freight tonnage had been captured by trucks, barges, pipelines, airlines and other forms of transportation. H. Rep. No. 96-1035, 96th Cong., 2d Sess. 35 (1980). The result is that today, "there are few significant commodities which are not practically susceptible to transportation by at least two competing modes of surface transportation." *Illinois G.C. R.R. - Acquisition*, 338 I.C.C. 805, 836 (1971).

The railroads' steady loss of business after World War II matched their increasingly serious financial plight. Rates of return on capital fell to a fraction of the cost of new capital, preventing needed modernization of aging systems. Major railroads in the East followed each other into bankruptcy. In

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<sup>2</sup> *Western Coal Traffic League v. United States*, 719 F.2d 772 (1983). Pet App. A.

<sup>3</sup> Interstate Commerce Act, 24 Stat. 379 (1887), amended *inter alia* by the Railroad Revitalization and Regulatory Reform Act of 1976 ("4-R Act"), 90 Stat. 31, now codified in 49 U.S.C. § 10101, *et seq.*

enacting the 4-R Act in 1976, Congress found that cumbersome and excessive agency regulation of rates was a major cause of the railroads' financial condition and of their loss of traffic to other modes of transportation. H. Rep. No. 96-1035, *supra*, at 35.<sup>4</sup>

Congress enacted the 4-R Act to restore health to the rail industry by reducing ICC regulation and providing railroads with "greater freedom to raise or lower rates for rail services in competitive markets." 90 Stat. 33. Among other changes, the new law *abolished* maximum rate regulation wherever the railroad charging the rate lacked "market dominance."<sup>5</sup> The statute defined market dominance broadly as "an absence of effective competition from other carriers or modes of transportation, for the traffic or movement to which the rate applies." *Id.* Congress delegated to the Commission the authority to adopt, after considering the views of the Justice Department and the Federal Trade Commission, "standards and procedures" for determining whether a railroad possesses market dominance in particular cases. *Id.*

The Commission proceeded cautiously. In its initial rules, it adopted three evidentiary presumptions providing that when certain trigger facts were proved, the Commission would rebuttably presume the existence of market dominance, leaving the railroads free to refute the showing with other evidence of effective competition.<sup>6</sup> Contrary to the views of the Justice Department and the FTC, the ICC also said that it would not consider evidence of geographic or product competition in deciding whether rail service is subject to effective competition.

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<sup>4</sup> Congress found that these competing modes of transportation are both more prosperous and less regulated. See H. Rep. No. 96-1035, *supra*, at 35-36.

<sup>5</sup> 90 Stat. 35, now codified at 49 U.S.C. §§ 10701a(b)(1), 10709(a)-(c).

<sup>6</sup> *Ex Parte No. 320*, 353 I.C.C. 874 (tentative rules), *modified*, 355 I.C.C. 12 (1976) (final rules).

Since geographic and product competition are the central issue in this case, a brief description of each concept is useful:

Geographic competition exists where the ability of a shipper to obtain a product from an alternative source or send a product to a different destination restrains the railroad rate in question.<sup>7</sup>

Product competition exists where the ability of a shipper to use a substitutable product restrains the railroad rate in question.<sup>8</sup>

Both forms of competition have long been recognized as effective constraints on pricing, both in the railroad industry and elsewhere, in judicial decisions, agency regulation, and economic literature. See pp. 9-11, below.

On judicial review, the District of Columbia Circuit upheld the Commission's initial rules.<sup>9</sup> Stressing the ICC's duty to reexamine its rules later in the light of actual experience, the court affirmed the Commission's decision not to consider product and geographic competition. The court made clear that it was upholding the decision as an exercise of agency discretion and that the statute did not compel the Commission to ignore these forms of competition. *Id.* at 633-34.

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<sup>7</sup> As Judge Brown explained below: "[T]he idea of geographic competition makes economic sense . . . . For example, a Chicago coal purchaser might have two alternate sources of supply: Southern Illinois and Wyoming coal being a fungible commodity[,] the Chicago purchaser has no preference between the two . . . . The carrier, if it hopes to secure the Wyoming business, must and will take the alternative source into account — a pure case of geographic competition within a market." *Western Coal Traffic League v. United States*, 694 F.2d 378, 398 (1982) (Pet. App. C-35) (dissent to original panel opinion).

<sup>8</sup> For example, if a power plant can readily burn either coal or oil, the railroad rate for carrying coal from the mine to the power plant may be constrained by effective competition from another rail carrier (or a pipeline or barge) transporting oil to the same plant.

<sup>9</sup> *Atchison, T. & S.F. Ry. v. ICC*, 580 F.2d 623 (1978). The court remanded on an aspect of the initial rules not here involved.

Shortly thereafter, the Commission in 1979 ruled in *Ex Parte No. 320* that it *would* consider evidence of product and geographic competition to rebut presumptions of market dominance. 359 I.C.C. at 736 n.7. Accordingly, the Commission has now been considering product and geographic competition in market dominance cases for approximately five years.

2. Dissatisfied with the extent of deregulation under the 4-R Act, Congress in 1980 enacted the Staggers Rail Act.<sup>10</sup> The Staggers Act, *inter alia*, required the Commission to deregulate any rail rate that is below a specified percentage of the variable cost of providing the service. 94 Stat. 1900, codified at 49 U.S.C. § 10709(d). In all other respects, Congress maintained unchanged the statutory market dominance standard, stressing that it did not intend "in any way to restrict the ability of the Commission to apply [the market dominance] concept, both in its regulations and individual cases."<sup>11</sup> Significantly, Congress knew that the ICC at that time was considering product and geographic competition in market dominance decisions and had announced its intention to continue doing so.<sup>12</sup>

Following enactment of the Staggers Act, the ICC instituted *Ex Parte No. 320* (*Sub No. 2*). After receiving comments from interested parties, the Commission repealed its

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<sup>10</sup> Staggers Rail Act of 1980, 94 Stat. 1895, codified in various sections of 49 U.S.C. § 10101, *et seq.* Congress found that the ICC's initial market dominance rules "freed up less than 30 percent of the traffic from regulation" (H. Rep. No. 96-1035, *supra*, at 38), even though a study performed for the ICC confirmed that less than 5 percent of all rail traffic is market dominant in the long run and only 10-15 percent in the short run. Kearny, *A Study to Perform an In-Depth Analysis of Market Dominance and Its Relationship to Other Provisions of the 4-R Act*, IX (1979).

<sup>11</sup> H. Rep. No. 96-1430, 96th Cong., 2d Sess. 89 (1980). In 1978, in the interim between the 4-R Act and the Staggers Act, Congress recodified the entire Interstate Commerce Act. In doing so, it condensed the phrase "traffic or movement" in the market dominance provision into "transportation." 92 Stat. 1382. Congress explicitly said that no changes in meaning were intended. *Id.* at 1466.

original presumptions and adopted detailed guidelines describing evidentiary factors and procedural steps for making market dominance decisions. Pet. App. D. In the guidelines, it reaffirmed that it would continue to consider evidence of product and geographic competition. This last decision was supported by a wealth of evidence, including evidence of actual railroad industry practice,<sup>13</sup> the official views of the Department of Transportation,<sup>14</sup> and the Commission's own expert judgment that this course would foster more accurate market dominance decisions. Pet. App. at D-14.

Petitioners sought judicial review of the new guidelines on various grounds in the Court of Appeals for the Fifth Circuit.<sup>15</sup> The court denied a stay, so the ICC has applied its new guidelines since 1981 and has continued to consider product and geographic competition, as it had done since 1979. Other utilities also sued in the First Circuit to prevent the ICC from applying the new guidelines to pending cases. This attempt was rejected by the First Circuit, which noted "the substantial public interest . . . in deregulation of those rail carriers who are in fact subject to effective competition." *New England Power Co. v. United States*, 693 F.2d 239, 245 (1982).

In the Fifth Circuit, the panel that initially reviewed the guidelines sustained them in most respects. Pet. App. C. However, by a 2-to-1 vote, the panel held that the statute did not

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<sup>13</sup> Railroad officers, who are responsible for making pricing decisions, confirmed with specific examples that railroads must and do take product and geographic competition into account in setting rates. See Verified Statements of R.N. Van Hook, John B. McMichael, and Timothy James Hurley submitted in *Ex Parte No. 320* (Sub No. 2).

<sup>14</sup> DOT comments in *Ex Parte No. 320* (Sub No. 2). The Department of Justice and the FTC had earlier expressed the same position. See p.3, above.

<sup>15</sup> The new guidelines (Pet. App. at D-19 - D-24), together with the explanatory decision (*id.* at D-1 - D-19) reflect a detailed code of substantive and procedural rules for market dominance determinations, and petitioners in the Court of Appeals initially attacked a number of different elements in the guidelines. In this Court, petitioners appear to have abandoned all of their attacks except the claim that the Commission was not permitted to continue to consider product and geographic competition.

permit the Commission to consider evidence of product and geographic competition. *Id.* at C-18 - C-21. On rehearing *en banc*, the full court held 8 to 2<sup>16</sup> that the statute did not prevent evidence of product and geographic competition. Pet. App. A. The *en banc* decision noted that prohibiting the Commission from considering product and geographic competition "[u]ndoubtedly" would continue regulation of some competitive rates, a result that "flies in the face of Congress' stated policy of deregulation of rates subject to effective market control." *Id.* at A-11. The effect of the *en banc* decision was to sustain in all respects the Commission's guidelines.

### REASONS FOR DENYING THE WRIT

In the 4-R Act, Congress defined market dominance in general terms, and it delegated to the ICC the responsibility to delineate and apply the concept. In this case, the ICC permissibly exercised its expert discretion in adopting the challenged guidelines. The Commission had ample basis for considering evidence of product and geographic competition, which are competitive forces widely recognized in law and business as capable of effectively restraining prices including railroad rates. There is no conflict among the circuits or with any decision of this Court and no other reason for further review in this case.

#### I. This Case Does Not Merit Review Under Accepted Standards for Certiorari.

This case meets none of the established criteria for certiorari. The Commission's decision to continue considering evidence of product and geographic competition, upheld by the *en banc* court below, involves only a "unique question of statutory construction" without precedential significance for other statutes. *Watt v. Alaska*, 451 U.S. 259, 274 (1981) (Stevens, J., concurring). No conflict exists among the circuits, and the

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<sup>16</sup> The only two dissenters from the *en banc* decision were the two members of the original panel majority.

Commission's approach accords with decisions of this and other courts, practice in the railroad industry, and the views of economists and legal scholars.

Every court of appeals decision that touches upon whether the Commission can admit evidence of product and geographic competition has suggested at least implicitly that such forces may be considered. Most relevant is *Atchison, T. & S.F. Ry. v. ICC*, *supra*, where the D.C. Circuit reluctantly sustained the Commission's initial refusal to consider product and geographic competition. The court there insisted that its judgment represented only a deferral to the discretion of the agency. It deprecated the argument, advanced here by petitioners, that Congress prohibited the Commission from considering product and geographic competition, suggesting that such a reading might seem "to attribute excessive significance to a terse statutory clause." 580 F.2d at 634. The court also stressed that the ICC's decision was "part of an ongoing process of agency scrutiny, correction and refinement." *Id.* at 630.<sup>17</sup>

The Commission's decision to consider product and geographic competition accords, more broadly, with numerous decisions of the courts recognizing that product and geographic

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<sup>17</sup> Other cases merit briefer mention. In *Iowa Public Service Co. v. ICC*, 643 F.2d 542 (1981), the Eighth Circuit upheld an ICC decision that no product or geographic competition had been proved on the facts of the particular case; the court expressed no doubt that such evidence could be considered.

In *New England Power Co. v. United States*, *supra*, the First Circuit upheld the ICC in applying the new guidelines to pending cases. While the court did not pass on the merits of the guidelines, it emphasized Congress' repeated grants of authority on the issue to the Commission and quoted this Court pertinently: "The construction of a statute by those charged with its execution should be followed unless there are compelling indications that it is wrong . . . ." 693 F.2d at 244.

Before the Commission issued its current guidelines, the Fifth Circuit remanded a market dominance decision to the ICC to explain why it was considering product and geographic competition. *Central Power & Light Co. v. United States*, 634 F.2d 127 (5th Cir. 1980), *on rehearing*, 639 F.2d 1104, *cert. denied*, 454 U.S. 831 (1981). If the court had thought that the statute prohibited such consideration, no remand would have been required.



competition do constrain prices. This Court has held, for example, that the price of cellophane is constrained by the availability of substitutable wrapping paper (*United States v. E.I. du Pont de Nemours & Co.*, 351 U.S. 377 (1956))—an example of product competition—and that different Appalachian coal mines at different origins compete with one another in serving a Florida power plant (*Tampa Electric Co. v. Nashville Coal Co.*, 365 U.S. 320 (1961))—a classic instance of geographic competition. The ICC itself has considered evidence of product and geographic competition for many years in resolving other issues of competition.<sup>18</sup>

Petitioners' suggestion that under the guidelines the Commission no longer will have jurisdiction over rates for non-competitive traffic is completely unfounded. The Commission has merely agreed to consider evidence of product and geographic competition on a case-by-case basis and give that evidence whatever weight it may be worth in demonstrating that effective competition exists. What petitioners seek is a rigid exclusionary rule that compels the Commission to ignore product and geographic competition evidence in every case, no matter how persuasive it may be.

In prior market dominance cases, the Commission has sometimes found that product and geographic competition effectively constrained the challenged rates, but sometimes it has rejected the allegations and found the rates subject to regulation.<sup>19</sup> Thus, actual experience since 1979 hardly substantiates shipper claims that invocation of product and geo-

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<sup>18</sup> See, e.g., *Chicago & E.I.R.R. v. United States*, 384 F. Supp. 298, 300-01 (N.D. Ill. 1974), *aff'd per curiam*, 421 U.S. 956 (1975); *Ex Parte No. 319*, 361 I.C.C. 238, 242-43, *aff'd in relevant part and remanded sub nom. National Ass'n of Recycling Industries, Inc. v. ICC*, 627 F.2d 1328 (D.C. Cir. 1980), *modified per curiam*, 449 U.S. 609 (1981); *CSX Corp.*, 363 I.C.C. 518, 571 (1980). Indeed, in some cases, product and geographic competition have been found to be the most important competitive influence on railroad rates. *Ex Parte 270 (Sub No. 4)*, 345 I.C.C. 71, 135, 313 (1974).

<sup>19</sup> See, e.g., *Iowa Public Service Co. v. ICC*, *supra*; *Potomac Elec. Power Co. v. B. & O. R.R.*, No. 37872s (served December 27, 1982); *Consumers Power Co. v. N. & W. Ry. Co.*, No. 37854s (served March 22, 1983).



graphic competition has been an "open-sesame" to wholesale deregulation. Moreover, judicial review remains available in each individual case to assure that the Commission does not exceed Congress' directive to free competitive rates from regulation.<sup>20</sup>

Petitioners claim that it is so difficult to evaluate product and geographic competition that introduction of such evidence will cause administrative delay and confusion. The Commission, however, has been considering product and geographic competition in market dominance cases since 1979 (and in other cases since the Nineteenth Century (p. 9 & n.18, above)) without encountering unusual practical difficulties. In any event, an agency's judgment about its own internal operations is entitled to exceptional deference from courts. *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 524-25 (1978). The ICC found that its guidelines will foster expeditious market dominance decisions and actually reduce the litigation burden on shippers by their greater detail and more precise allocations of burdens of proof. Pet. App. at E-4 - E-5.

## II. The Commission Has Statutory Authority to Consider Product and Geographic Competition in Market Dominance Cases.

The petition for certiorari not only fails to establish any of the usual grounds for review in this Court but the decision it seeks to have reviewed is plainly correct. The language, legislative history and purpose of the market dominance statute all demonstrate that there is nothing in the statute that precludes the Commission from considering product and geographic competition in determining whether there is effective competition for the traffic involved.

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<sup>20</sup> Any final decision by the Commission that it will not apply the reasonableness standard to rates for particular traffic because effective competition exists is subject to judicial review, whether the finding of effective competition is based on product and geographic competition or on any other form of competition. See, e.g., *Central Power & Light Co. v. United States*, *supra*.

Congress defined market dominance broadly in terms of "effective competition" and did not distinguish among types of competition that could be considered. It also delegated to the Commission the authority to promulgate standards for determining market dominance. As the Court below stated,

"The 4R Act does not contain a detailed congressional formula for determining market dominance. Instead, it contains a generally phrased test designed to achieve a stated goal—deregulation of rail rates subject to effective competition." Pet. App. at A-9.

The legislative history also confirms that Congress intended the Commission to look to *economic reality* in determining the existence of competitive forces effective to restrain rates. The final 4-R Act Conference Report states, "it is intended that when the Commission administers the test, *it will recognize the absence of forces which normally govern competitive markets.*" H. Rep. No. 94-781, 94th Cong., 2nd Sess. 148 (1976) (emphasis added). As already noted, the Department of Justice, and other Government agencies expert in evaluating competitive conditions, have long supported the Commission's view that product and geographic competition do constrain rates in the real world and that evidence of such constraints should be considered in market dominance cases. Expert anti-trust scholars and commentators agree that such forces can and do constrain prices.<sup>21</sup>

Common sense, brought to bear through a single example, supports the same conclusion. Consider a single power plant, sited on a river and served by a single rail line carrying coal from one mine; and assume that it is served also by a single barge line carrying coal from a second coal mine at a different origin. If the railroad raises its rates unduly or the quality of the service is poor, the plant may well be able to use the barge line to provide it with coal, creating effective competition

<sup>21</sup> See, e.g., 2 P. Areeda & D. Turner, *Antitrust Law*, ¶¶ 502, 504, 523-28 (1978); F. Scherer, *Industrial Market Structure and Economic Performance* 60-61 (2d ed. 1980); Landes & Posner, "Market Power in Antitrust Cases," 94 *Harv. L. Rev.* 937, 960-72 (1981).

constraining the railroad rate. There is no reason why such evidence of barge competition should be excluded automatically in market dominance cases.<sup>22</sup>

Petitioners' claim that the Commission and the *en banc* Court erred rests only on a labored construction of the bare language of the statute. Petitioners concede that nothing in the statute specifically forbids considering product and geographic competition, but they argue that in those instances the railroad and the competing carrier do not compete "for the movement" to which the challenged rate applies, because a "movement" usually refers to the carriage of a product between two fixed points. They conclude that the carrier offering product or geographic competition may compete "with" the movement at issue but cannot compete "for" it.<sup>23</sup>

But a court "cannot infer so much from so little." *Permian Basin Area Rate Cases*, 390 U.S. 747, 774 (1968). The statutory language speaks of effective competition "for the traffic or movement." "Traffic," a well-established railroad concept, embraces an array of movements from several origins or to several destinations (*e.g.*, the ICC has spoken of "source [geographic] competition for coal traffic" in the Southeast, *CSX Corp.*, *supra*, 363 I.C.C. at 571) and embraces transportation of many substitutable commodities (*e.g.*, traffic in fresh fruits and vegetables from Florida).<sup>24</sup> A carrier who offers product

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<sup>22</sup> Whether the barge line *does* provide effective competition for the railroads, in the particular circumstances, is a factual question the agency might have to resolve, just as it would have to resolve the question whether two railroads running side by side were effective competitors for particular traffic. Petitioners' position, however, is that the agency may not even consider the evidence under the market dominance statute.

<sup>23</sup> Petitioners also argue that the statutory phrase "from other carriers" excludes product and geographic competition. This construction is without merit. Product and geographic competition in this context are offered by *other carriers* moving substitutable goods or the same goods from different origins or to different destinations.

<sup>24</sup> See, *e.g.*, *A. L. Mechling Barge Lines, Inc. v. United States*, 368 U.S. 324, 326 (1961) (competition between barges for grain "traffic from the producing areas into Chicago"); *United States v. ICC*, 352 U.S. 158, 160 (1956) ("military export traffic").

and geographic competition competes "for" the same traffic to which a rate applies, because if the rate is too high the competing carrier will take away the transportation business.

Petitioners also say that Congress in the Staggers Act did not change materially the statutory definition of market dominance, arguing that Congress thereby "reenacted" and approved the Commission's pre-existing decision as to whether it would consider product and geographic competition. This argument undermines the petitioners' position rather than assists them. At the time Congress enacted the Staggers Act in 1980, the ICC had already in 1979 expressly stated that it *would* consider product and geographic competition in determining market dominance and had in fact decided cases based upon the presence or absence of these forces. See p. 5, above. Since Congress knew of the ICC's position, any "reenactment" of the market dominance test without change validates the Commission's current position.<sup>25</sup>

It has also been argued that product and geographic competition are implicitly barred because Congress in passing the Staggers Act considered—but did not pass—a provision that would have required the Commission to consider geographic competition under a specific and compulsory statutory definition.<sup>26</sup> The opponents of that proposed definition said that they did not object as such to the consideration of geographic competition but merely to the formulation in the proposed

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<sup>25</sup> Congress not only knew of the ICC's ongoing consideration of these forces but criticized the ICC for acting *ad hoc* instead of by rulemaking. In this case, the ICC has acted by rulemaking. See House Commerce Subcommittee on Oversight, *Report on Railroad Coal Rates*, 96th Cong., 2d Sess. 88 (1980).

<sup>26</sup> This argument is made in an amici brief (p.15) filed on behalf of several Congressmen. *Post hoc* claims by individual Congressmen are not appropriate evidence of congressional intent. *E.g.*, *Regional Rail Reorganization Act Cases*, 419 U.S. 102, 132 (1974). Amici's counsel has been associated with one of the law firms currently representing petitioners in this case.

statute.<sup>27</sup> There is thus no plausible inference that Congress meant to bar the Commission from developing its own definitions of product and geographic competition.<sup>28</sup> In any event, Congress itself specifically negated any such inference in its final Conference Report on the Staggers Act:

"Maintenance of the 'market dominance' standard is not intended in any way to restrict the ability of the Commission to apply this concept, both in its regulations and individual cases." H. Rep. No. 96-1430, *supra*, at 89.

Courts generally defer, of course, to the interpretation of a statute by the expert agency charged with its administration. *Udall v. Tallman*, 380 U.S. 1 (1965). The deference required is even greater where, as here, the ICC is actually exercising a delegated power to prescribe "standards and procedures" in order to elaborate and implement a broadly phrased statutory directive.<sup>29</sup> In such circumstances, "Congress entrusts to the [agency], rather than to the courts, the primary responsibility for interpreting the statutory term." *Batterton v. Francis*, 432 U.S. 416, 425 (1977). Whatever rubric one employs to measure the Commission's action—literal language, legislative history,

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<sup>27</sup> Then Congressman Eckhardt, the principal opponent of the proposed statutory definition, said at that time that he considered it "perfectly proper" to "deprive the ICC of jurisdiction" where there existed a "true alternative source"; but he objected that the proposed definition was not properly drafted to achieve this result. 126 Cong. Rec. H6011 (daily ed. July 2, 1980).

<sup>28</sup> See, e.g., *Farmland Industries, Inc. v. United States*, 642 F.2d 208, 211-13 (7th Cir. 1981) (Congress' rejection of a bill requiring the ICC to consider a factor did not bar ICC from considering the factor in applying its own flexible rule).

<sup>29</sup> Petitioners argue that the ICC's decision is entitled to no deference, because the agency once held a different view; but agencies are expected to modify their rules and policies in response to experience and reflection. *American Trucking Ass'ns v. Atchison, T. & S.F. Ry.*, 387 U.S. 397, 416 (1967). As for the amici's claim (pp.5-9) that the ICC lost its authority to change market dominance rules, this is squarely refuted by the legislative history quoted in text on this page.

statutory purpose, or deference to expertise and precedent—the Commission had ample basis for its decision in this case.<sup>30</sup>

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<sup>30</sup> Petitioners (p.14) and amici (p.17) also argue that Section 205 of the Staggers Act, 94 Stat. 1905, impliedly prohibits the ICC from considering product and geographic competition in determining market dominance. Not only is the inference wrong, but Section 205 itself explicitly forbids such an inference in subsection (a)(3)(B).

## CONCLUSION

For the reasons stated, the petition for certiorari should be denied.

Respectfully submitted,

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March 1984

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## **APPENDIX**

## APPENDIX

### LIST OF PARENTS, SUBSIDIARIES, AND AFFILIATES OF RESPONDENT RAILROADS, PURSUANT TO SUP. CT. R.

28.1

1. The CSX Corporation is the parent of respondents:

BALTIMORE & OHIO RAILROAD COMPANY  
CHESAPEAKE AND OHIO RAILWAY COMPANY  
SEABOARD SYSTEM RAILROAD, INC.  
WESTERN MARYLAND RAILWAY COMPANY

A list of affiliates or subsidiaries appears as Attachment 1.

2. Burlington Northern, Inc., is the parent of respondent BURLINGTON NORTHERN RAILROAD COMPANY. A list of affiliates or subsidiaries appears as Attachment 2.

3. The Chicago Northwestern System is the parent of respondent CHICAGO AND NORTHWESTERN TRANSPORTATION COMPANY. A list of affiliates or subsidiaries appears as Attachment 3.

4. Illinois Central Industries, Inc., is the parent of respondent ILLINOIS CENTRAL GULF RAILROAD COMPANY. A list of affiliates or subsidiaries appears as Attachment 4.

5. Union Pacific Corporation is the parent of respondents MISSOURI PACIFIC RAILROAD COMPANY and UNION PACIFIC RAILROAD COMPANY. A list of affiliates or subsidiaries appears as Attachment 5.

6. Norfolk Southern Corporation is the parent of respondents NORFOLK & WESTERN RAILWAY COMPANY and SOUTHERN RAILWAY COMPANY. A list of affiliates or subsidiaries appears as Attachment 6.

7. Santa Fe Southern Pacific Corp. is the parent of respondent SANTA FE INDUSTRIES, INC.; it is also the parent of Southern Pacific Company, which is the parent of respondent SOUTHERN PACIFIC TRANSPORTATION COMPANY. A list of affiliates or subsidiaries appears as Attachment 7.

8. Canadian Pacific Limited is the parent of respondent SOO LINE RAILROAD COMPANY. A list of affiliates or subsidiaries appears as Attachment 8.

9. The United States Steel Corporation is the parent of respondent BESSEMER AND LAKE ERIE RAILROAD CORPORATION; and Rio Grande Industries, Inc., is the parent of respondent DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY. No affiliate or subsidiary of either respondent has any securities outstanding in the hands of the public.

10. Respondent CONSOLIDATED RAIL CORPORATION has no parent. Its only subsidiary with securities outstanding in the hands of the public is Canada Southern Railway Company.

11. Respondent ASSOCIATION OF AMERICAN RAILROADS is an association of railroads operating in the United States, Canada, and Mexico, whose members comprise over 90% of the trackage and freight revenue in the United States.

#### ATTACHMENT 1

*Respondents:* Baltimore & Ohio Railroad Company  
Chesapeake and Ohio Railway Company  
Seaboard System Railroad, Inc.  
Western Maryland Railway Company

*Related Companies:* Akron and Barberton Belt Railroad  
Company, The  
Akron Union Passenger Depot Company,  
The  
Allegheny and Western Railway Company  
Atlanta and West Point Rail Road Company  
Augusta and Summerville Railroad Company  
Baltimore and Cumberland Valley Rail Road  
Extension Company, The  
Baltimore and Ohio Chicago Terminal  
Railroad Company

Baltimore and Philadelphia Railroad  
Company, The  
Beaver Street Tower Company  
Belt Railway Company of Chicago  
Buffalo, Rochester and Pittsburgh Railway  
Company  
Chicago South Shore and South Bend  
Railroad  
Central Florida Pipeline Corporation  
Central Railroad Company of South Carolina,  
The  
Central Transfer Railway and Storage  
Company  
Chatham Terminal Company  
Chicago and Western Indiana Railroad  
Company  
Clearfield and Mahoning Railway Company  
Cleveland Terminal & Valley Railroad  
Company, The  
Dayton and Michigan Railroad Company  
Dayton and Union Railroad Company  
First Georgia Development Corporation  
Fruit Growers Express Company  
Green Real Estate Company  
Home Avenue Railroad Company  
Lakefront Dock and Railroad Terminal  
Company, The  
Louisville, Henderson & St. Louis Railway  
Company  
Louisville & Nashville Railroad Company  
Monongahela Railway Company, The  
Nashville & Decatur Railroad Company  
National Mine Service Company  
Nicholas, Fayette and Greenbrier Railroad  
Company  
Norfolk and Portsmouth Belt Line Railroad  
Company  
Paducah & Illinois Railroad Company

Richmond, Fredricksburg & Potomac  
 Railroad Company  
 Richmond-Washington Company  
 Terminal Railroad Association of St. Louis  
 Trailer Train Company  
 Tylerdale Connecting Railroad Company,  
 The  
 Winchester and Potomac Railroad Company,  
 The  
 Winston-Salem Southbound Railway  
 Company  
 Woodstock & Blocton Railway Company

## ATTACHMENT 2

*Respondent:* Burlington Northern Railroad Company

*Related*  
*Companies:* Belt Railway Company of Chicago, The  
 BN Financial Services, Inc.  
 Burlington Northern Airmotive, Inc.  
 Burlington Northern International Services,  
 Inc.  
 Burlington Northern Railway Company  
 Butte Pipe Line Company  
 Camas Praire Railroad Company  
 Chicago Union Station Company  
 Colt Intermodal Inc.  
 Davenport, Rock Island and North Western  
 Railway Company  
 Denver Union Terminal Railway Company,  
 The  
 El Paso Company  
 Galveston Terminal Railway Company  
 Glacier Park Company  
 Glacier Park Liquidating Company  
 Houston Belt & Terminal Railway Company  
 Iowa Transfer Railway Company  
 Kansas City Terminal Railway Company

Keokuk Union Depot Company  
 Lake Superior Terminal and Transfer  
     Railway Company, The  
 Longview Switching Company  
 Meridian Land & Mineral Company  
 Milestone Petroleum, Inc.  
 Minnesota Transfer Railway Company, The  
 New Mexico and Arizona Land Company  
 Paducah & Illinois Railroad Company  
 Plum Creek Timber Company, Inc.  
 Portal Pipeline Company  
 Portland Terminal Railroad Company  
 Pueblo Union Depot and Railroad Company,  
     The  
 R-M Holdings Corporation  
 St. Paul Union Depot Company, The  
 Trailer Train Company  
 Wichita Union Terminal Railway Company,  
     The  
 Winona Bridge Railway Company

### ATTACHMENT 3

*Respondent:* Chicago and Northwestern Transportation  
                   Company  
  
*Related*       Iowa Transfer Railway Company Kansas  
*Companies:*   City  
                   Terminal Railway Company Lake Superior  
                   Terminal & Transfer  
                   Railway Company of the State of  
                   Wisconsin, The  
                   Minnesota Transfer Railway Company, The  
                   Peoria and Pekin Union Railway Company  
                   Railbox Company  
                   St. Paul Union Depot Company  
                   Trailer Train Company

## ATTACHMENT 4

*Respondent:* Illinois Central Gulf Railroad Company

*Related* A. B. Estrella

*Companies:* Abex Finangaria, S.r.l.  
 Abex Finanziaria  
 Abex Fluid Power Limited  
 A. B. Estrella  
 Abex A/S  
 Abex Corporation  
 Abex Denison Limited  
 Abex Finangaria, S.r.l.  
 Abex Finanziaria  
 Abex Fluid Power Limited  
 Abex Ges. m.b.H.  
 Abex G.m.b.H.  
 Abex Industrial, S.A.  
 Abex Industries, A.B.  
 Abex Industries Ltd.  
 Abex Industries, S.A.  
 Abex International Holdings Limited  
 Abex International, S.A.  
 Abex Mead Limited  
 Abex Paqid Equipement S.A.  
 Abex Pagid Reibbelag G.m.b.H.  
 Ac'cent International De Mexico, S.A. De  
 C.V.  
 Ac'cent International, Inc.  
 ACR Maine, Inc.  
 Almacenes Refrigerantes, S.A. De C.U.  
 Alton Manufacturing Company  
 American Brake Shoe Company  
 American Refrigeration Products, S.A.  
 Amsco Mexicana S.A.  
 Atherton Silencers Limited  
 Au Gourmet Foods De Luxe, Inc.

Basingstake Foods Limited  
Belt Ry. Co.  
Birmingham Exhaust Equipment Company  
Limited  
Black Diamond, Inc.  
Blanchard-Nus Limited  
Blue Island Railroad Company  
Bolingbrook 55 Corp.  
Boston Bean Pot, Inc.  
Bridgewater Machine Company  
Bubble-Up Company, Inc.  
Buffalo Refrigerating Company, Inc.  
Butcher Boy Refrigerator Door Co.  
Centigon, Inc.  
Chandeysson Electric Company  
Chesley Industries, Inc.  
Chicago Intermodal Company  
Colony Financial Corporation  
Compet Corporation  
Cobreq Cia. Brasileira de Equipamentos  
Cornish Cannery Limited  
Cosmic Enterprises, Inc.  
Cosmic Stores, Inc.  
Cove Development Corporation  
Covex S.r.L.  
Cutcher Canning Co., Inc.  
Cypress Bend Corporation  
Dad's Root Beer Company  
Denison Hydraulics Company, The  
Denison Hydraulics India Limited  
Denison Hydraulics, Japan Ltd.  
Diablitos Mexicanos, S.A.  
Diablitos Venegolanas, C.A.  
Do-Ray Lamp Co. Ltd.  
Environ of Inverrary, Inc.  
Exhaust Specialists Limited  
Frendo-Abex S.p.A.  
Fren-Do Sud S.p.A.



Friend Brothers, Inc.  
 Frolic Homes, Inc.  
 Gas Welding, Inc.  
 Genadco Advertising Agency, Inc.  
 Grupo De Frigeracion Industrial y  
     Comercial,  
 S.A. de C.V.  
 GM&O Land Company  
 Gulf Transport Company  
 Harry Peck & Co.  
 Havana Pepsi-Cola Bottling Co.  
 Helvetia Leasing Corporation  
 Helvetia Milk Condensing Company, Inc.  
 Helvetia Properties, Inc.  
 Helvetia Redevelopment Corporation  
 Hi-Q Products Company  
 Hussmann Acceptance Co.  
 Hussmann Acceptance Co. Canada Limited  
 Hussmann Corporation  
 Hussmann Distributing Company, Inc.  
 Hussmann Equipment Limited  
 Hussmann International Inc.  
 Hussman Refrigeration Ltd.  
 Hussmann Store Equipment, Ltd.  
 Huth Manufacturing Corporation  
 IC Acquisition Company  
 IC Equipment Leasing Inc.  
 IC Industries, Inc.  
 IC Industries Finance Corporation, N.V.  
 IC Industries Insurance Co. Ltd.  
 IC Leasing, Inc.  
 IC Products Company  
 Iconic, Inc.  
 ICP Holding Corp.  
 Illinois Center Corporation  
 Illinois Central Export Corporation  
 Illinois Central Industries, Inc.  
 Industrias Frigorificas, S.A. de C.V.

International Parts Corporation  
International Parts Manufacturing, Ltd.  
International Stamping Company, Inc.  
J. H. Senior and Company Limited  
Jefferson SWRR Co.  
Joliet Union Depot Co.  
Kansas City Terminal Co.  
Ken-Craft Products, Inc.  
Kensington and Eastern RR Co.  
Kentuckiana Bottlers, Inc.  
Kolmer Products Corporation  
Krack Corporation  
Lakes Entrance Processors Pty. Limited  
Laura Scudder's, Inc.  
Le Silencieux, S. A.  
Lincoln Financial, Inc.  
Lloyds Abex Limited  
Lloyds (Burton) Ltd.  
Mayflower Products Limited  
Mexican Holding Co.  
Mid-America Improvement Corporation  
Midas Australia Pty. Ltd.  
Midas Automotive Ltd.  
Midas Canada, Inc.  
Midas Euro., Inc.  
Midas International Corporation  
Midas Muffler (Vic.) Pty., Limited  
Midas Properties, Inc.  
Midas Realty Corporation  
Midas Realty Corporation of Canada  
Midas S.A.  
Midas Silencers Centres U.K. Limited  
Midas Silencers Ltd.  
Midas Steel Processing Services, Inc.  
Midas Truck Body, Inc.  
Milady Foods, Inc.  
Mississippi Valley Corporation  
Missouri Speciality Spirits, Inc.

Muffler Corporation of America  
 905 Wine and Spirits, Inc.  
 Norris Homes, Inc.  
 North Carolina Corp.  
 Oak Village Development Corp.  
 Old Brazos Forge, Inc.  
 1, 2, 3 Auto Service GmbH  
 1, 2, 3 Auto Service GmbH & Co.  
 Paducah & Illinois RR Co.  
 Palmer Refrigeration Limited  
 Parmaco Products, Ltd.  
 Peoria & Pekin Union Ry. Co.  
 Pepsi-Cola General Bottlers, Inc.  
 Pet Incorporated (Delaware)  
 Pet Incorporated (Wyoming)  
 Pet International Sales Inc.  
 Pet Milk Company  
 Petrodyne S.A.  
 Petsub, Inc.  
 Pet Warehousing Company of California  
 Port 400 Holding Company  
 Potteries Exhaust Centre Limited  
 Refrigeracion Frio Lux, S.A.I.  
 Richardson & Robbins Co.  
 S.A. Ateliers et Fonderies B. Piret  
 S&T of Mississippi, Inc.  
 S&T South, Inc.  
 St. Louis Lithographing Company  
 C. Shippam, Limited  
 Siprof S.A.  
 South Chicago Railroad Co., The  
 South Properties, Inc.  
 Southland Canning & Packing Co., Inc.  
 Spartanburg Dairy, Inc.  
 Stanray Corporation  
 Star Cooler Corporation  
 Stephen F. Whitman & Son, Inc.  
 Stuckey's, Inc.

Stuckey's Stores, Inc.  
 Sundaram-Abex Limited  
 Terminal RR Assn.—St. Louis  
 TI Midas Limited  
 Trailer Train Co.  
 Uni-Abex Alloy Products Limited  
 Vendome Stores, Inc.  
 Violet Packing Co., The  
 Walsall Exhaust Centre Limited  
 Waterloo Railroad Company  
 William Underwood Company  
 Wine & Spirits Enterprises, Inc.  
 Winebrenner Corporation, The  
 Wolverhampton Exhaust Centre Limited

#### ATTACHMENT 5

*Respondents:* Missouri Pacific Railroad Company  
 Union Pacific Railroad Company

*Related Companies:* Alton & Southern Railway Company, The  
 American Refrigerator Transit Company  
 Arkansas & Memphis Railway Bridge and  
 Terminal Company  
 Belt Railway of Chicago  
 Bitter Creek Coal Company  
 Brownsville & Matamoros Bridge Company  
 Calnev Pipe Line Company  
 Camas Prairie Railroad Company  
 Champlin Canada Ltd.  
 Champlin Gas Pipeline, Inc.  
 Champlin Gas Processing Company  
 Champlin International Petroleum Company  
 Champlin Mid-Continent Corporation  
 Champlin Mid-Continent Crude Oil Pipeline,  
 Inc.  
 Champlin Mid-Continent Marketing, Inc.

Champlin Mid-Continent Products Pipeline,  
 Inc.  
 Champlin Mid-Continent Refining, Inc.  
 Champlin Petrochemicals, Inc.  
 Champlin Petroleum Company  
 Champlin Pipeline, Inc.  
 Champlin Trading Company  
 Chicago & Western Indiana Railway  
 Company  
 Chicago Heights Terminal Transfer Railroad  
 Company  
 Denver Union Terminal Railway Company,  
 The  
 Des Chutes Railroad Company  
 Doniphan, Kensett & Searcy Railway  
 Elk Mountain Coal Company  
 Galveston, Houston and Henderson Railroad  
 Company  
 Great Southwest Railroad, Inc.  
 Hanna Basin Coal Company  
 Harbor Service Stations, Inc.  
 Houston Belt & Terminal Railway Company  
 Jefferson Southwestern Railroad Company  
 Kanda Development Company  
 Kansas City Terminal Railway Company  
 Longview Switching Company  
 Los Angeles & Salt Lake Railroad Company  
 Missouri Improvement Company  
 Missouri Pacific Airfreight, Inc.  
 Missouri Pacific Equipment Corp.  
 Missouri Pacific Intermodal Transport, Inc.  
 Missouri Pacific Truck Lines, Inc.  
 Mount Hood Railway Company  
 MP Redevelopment Corporation  
 MRT Exploration Company  
 Ogden Union Railway and Depot Company,  
 The

Oregon Short Line Railroad Company  
 Oregon-Washington Railroad & Navigation  
     Company  
 Overthrust Pipeline, Inc.  
 Pacific Rail System, Inc.  
 Pacific Subsidiary, Inc.  
 Park Spring, Inc.  
 Panola Pipeline, Inc.  
 Portland Terminal Railroad Company  
 Portland Traction Company  
 Prospect Point Coal Company  
 Pueblo Union Depot and Railroad Company,  
     The  
 Ric-Con Corporation  
 Rock Springs Royalty Company  
 Rocky Mountain Energy Company  
 RM Leasing Company  
 St. Joseph and Grand Island Railway  
     Company, The  
 St. Joseph Terminal Railroad Company  
 Southern Illinois and Missouri Bridge  
     Company  
 Spokane International Railroad Company  
 Stauffer Chemical Company of Wyoming  
 Stonegate Park, Inc.  
 Terminal Industrial Land Company  
 Terminal Railroad Association of St. Louis  
 Texas City Terminal Railway Company  
 Texas & Missouri Pacific Railroad Company  
 Trailer Train Company  
 Uinta Development Company  
 Union Pacific Finance N.P.  
 Union Pacific Foundation  
 Union Pacific Freight Services Company  
 Union Pacific Fruit Express Company  
 Union Pacific Land Resources Corporation  
 Union Pacific Motor Freight  
 Union Pacific Resources Corporation

Union Pacific Resources Ltd.  
 Upland Industries Corporation  
 UP Leasing Corporation  
 Wasatch Indusance Limited  
 Weatherford Mineral Wells and  
 Northwestern Railway Co., The  
 Winton Coal Company  
 Yakima Valley Transportation Company

#### ATTACHMENT 6

*Respondents:* Norfolk & Western Railway Company  
 Southern Railway Company

*Related* Airforce Pipeline, Inc.  
*Companies:* Alabama Great Southern Railroad Company,  
 The  
 Algers, Winslow and Western Railway  
 Company  
 Arrowood-Southern Company  
 Arrowood-Southern Executive Park, Inc.  
 Athens Belt Line Railroad Company  
 Atlanta and Charlotte Air Line Railway  
 Company, The  
 Atlanta Terminal Company  
 Atlantic and East Carolina Railway Company  
 Atlantic and North Carolina Railroad  
 Company  
 Augusta and Summerville Railroad Company  
 Beaver Street Tower Company  
 Birmingham Terminal Company  
 Blue Ridge Railway Company  
 Camp Lejeune Railroad Company  
 Central of Georgia Railroad Company  
 Central Transfer Railway and Storage  
 Company  
 Charlotte-Southern Corporation  
 Chatham Terminal Company  
 Chattanooga Station Company

Chattanooga Terminal Railway Company  
 Chesapeake Western Railway  
 Cincinnati, New Orleans & Texas Pacific  
 Railway Company  
 Cincinnati Southern Railway  
 Citico Realty Company  
 Danville and Western Railway Company  
 Dereco, Inc.  
 Durham and South Carolina Railroad  
 Company  
 Elberton Southern Railway Company  
 Fairport, Painesville and Eastern Railway  
 Company  
 Fort Wayne Union Railway Company  
 1575 Eye Street Associates (Limited  
 Partnership)  
 Georgia Midland Railway Company, The  
 Georgia Northern Railway Company, The  
 Georgia Southern and Florida Railway  
 Company  
 High Point, Randleman, Asheboro and  
 Southern Railroad Company  
 Interstate Railroad Company  
 Lake Erie Dock Company  
 Lambert's Point Docks, Incorporated  
 Lenoir Car Works  
 Live Oak, Perry and South Georgia Railway  
 Company  
 Louisiana Southern Railway Company  
 Memphis and Charleston Railway Company  
 Mobile and Birmingham Railroad Company  
 Norfolk Southern Railway Company  
 Northern Ohio Food Terminal, Inc.  
 NW Equipment Corporation  
 Pocahontas Development Corporation  
 Pocahontas Kentucky Corporation  
 Pocahontas Land Corporation



Akron & Barberton Belt Railroad Company,  
 The  
 Nickel Plate Improvement Company, Inc.,  
 The  
 Scioto Valley and New England Railroad  
 Company, The  
 Shenandoah-Virginia Corporation  
 Toledo Belt Railway Company, The  
 National Investment Company, The  
 New Orleans Terminal Company  
 Norfolk and Portsmouth Belt Line Railroad  
 Company  
 Norfolk Southern Industrial Development  
 Corporation  
 North Carolina Midland Railroad Company,  
 The  
 North Carolina Railroad Company, The  
 North Charleston Terminal Company  
 Ocean Steamship Company of Savannah  
 Pine Brook Center Limited (Limited  
 Partnership)  
 Queen City Developers (Limited Partnership)  
 Richmond, Fredericksburg and Potomac  
 Railroad Company  
 Richmond-Washington Company  
 St. Johns River Terminal Company  
 700 North Fairfax Street Limited  
 Partnership  
 The South Western Rail Road Company  
 Southern Rail Terminals, Inc.  
 Southern Rail Terminals of Alabama Inc.  
 Southern Rail Terminals of North Carolina,  
 Inc.  
 Southern Railway-Carolina Division  
 Southern Region Coal Trnsport, Inc.  
 Southern Region Distribution Services, Inc.  
 Southern Region Industrial Realty, Inc.  
 Southern Region Investment Company

Southern Region Materials Supply, Inc.  
 Southern Region Motor Transport, Inc.  
 State University Railroad Company  
 Tennessee, Alabama & Georgia Railway  
 Company  
 Tennessee Railway Company  
 Terminal Properties, Inc.  
 Terminal Railroad Association of St. Louis  
 Trailer Train Company  
 Transylvania Railroad Company  
 Virginia Holding Corporation  
 Virginia and Southwestern Railway Company  
 Wabash Railroad Company  
 Wheeling and Lake Erie Railway Company,  
 The  
 Woodstock & Blocton Railway Company  
 Yadkin Railroad Company

#### ATTACHMENT 7

*Respondents:* Santa Fe Industries, Inc.  
 Southern Pacific Transportation Company  
  
*Related* Arkansas & Memphis Railway Bridge &  
*Companies:* Terminal Company  
 Bankers Leasing and Financial Corporation  
 Central California Traction Company  
 Evergreen Leasing Corporation  
 Ogden Union Railway & Depot Company,  
 The  
 Pacific Fruit Express Company  
 Portland Terminal Railroad Company  
 Portland Traction Company  
 Santa Fe Energy Company  
 Santa Fe Natural Resources, Inc.  
 St. Louis Southwestern Railway Company  
 Trailer Train Company

## ATTACHMENT 8

*Respondent:* Soo Line Railroad Company

*Related Companies:* Algoma Steel Corporation, Limited, The  
 AMCA Holdings (U.K.) Limited  
 AMCA International Limited  
 American Reinforcing Inc.  
 Amtel Chimie et Plastiques  
 Arrendadora Korco, S.A. de C.V. (Mexico)  
 Bilsa, S.A.  
 Bomag Australia PTY Ltd.  
 Bomag-Nenck B.m.b.H.  
 Bomag S.A.F.  
 Broses Osborn S.A.  
 Brushes International PLC (U.K.)  
 Brushes International do Brazil  
 Canada Line Agencies Limited, The  
 Canada Line Limited, The  
 Canada Line Services Limited, The  
 Canadian Pacific Enterprises Limited  
 Canadian Pacific Oil and Gas Norway A/S  
 CanPac Maritime Agencies Limited  
 Cascade Pipe Line Limited  
 Cherry Burrell Holdings Corporation  
 Cominco Ltd.  
 Compaloc  
 Corporate Foods Limited  
 Dandix, Inc. (U.S.A.)  
 Dendix Brushes Limited (U.K.)  
 Desa Industries (U.K.) Limited  
 Dominion Atlantic Railway Company, The  
 Dominion Bridge Sultzer, Inc.  
 Eastern Bakeries Limited  
 Energy Development (Management) Limited  
 Falt Towing Ltd.  
 Gem Power Brushes, Limited (U.K.)  
 Giddings & Lewis Foundation Inc.

Great Lakes Forest Products Limited  
 Greenex A/S  
 Hawaiian Western Steel Limited  
 Intrumentation Services, S.A.  
 Imodco International Inc.  
 KCL Leasing  
 Kingston and Pembroke Railway Company,  
     The  
 Koering Leasing  
 Koering Leasing Partners  
 Kremzar Gold Mines Limited  
 Lake Champlain and St. Lawrence Junction  
     Railway Company, The  
 Lake Erie and Northern Railway Company,  
     The  
 Lake St. Joseph Iron Inc.  
 Litwin Arabia Ltd.  
 Litwin (U.K.) Limited  
 Manitoba and North Western Railway  
     Company of Canada  
 Maple Shipping Company (U.K.) Limited  
 Marathon Aviation Terminals Limited  
 Massawippi Valley Railway Company  
 Mayo Forest Products Ltd.  
 Montreal and Atlantic Railway Company, the  
 National Hardware Specialties Limited  
 Nippon Bomag C., Ltd. (Japan)  
 OTM Limited  
 Ontario and Quebec Railway Company  
 Orbs-Johnson Systems, Inc.  
 Osborn Foundry Machinery, Ltd.  
 Osborn International G.m.b.H. (W.  
     Germany)  
 PanCanadian Petroleum Denmark A/S  
 PanCanadian Petroleum Limited  
 Pine Point Mines Limited  
 Pitt Street Developments Limited  
 Polytec S.A.R.L.

Princeton Gold Mines Limited  
 Ptarmigan Mines Limited  
 Robison Mines Limited  
 Rycon Mines Limited  
 Societe Anonyme des Machines Osborn  
 (France)

St. Lawrence and Ottawa Railway Company,  
 The

Steep Rock Resources Inc.  
 Sunloch Mines Limited  
 Sunro Mines Limited (N.P.L.)  
 T.E.B.A. B.V.I.O. (The Netherlands)  
 Telesat Canada

Toronto, Grey and Bruce Railway Company  
 Toronto Terminals Railway Company, The  
 Trailer Train Company

Vestgron Mines Limited  
 Village Green Mall Ltd.  
 Vol Mines Limited

Webb Jarratt & Company Limited  
 Western Fabricators Inc.  
 Western Metal Products Inc.